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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM: 1944

No. 106

THE UNITED STATES OF AMERICA, APPELLANT

vs.

HERMAN ROSENWASSER, AN INDIVIDUAL DOING
BUSINESS UNDER THE FIRM NAME AND STYLE OF
PERFECT GARMENT COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF COLUMBIA

FILED MAY 29, 1944

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(I)

- 1 [Names and addresses of attorneys omitted in printing.]
- 2 [Citation in usual form showing service on Bernard B. Laven, filed May 3, 1944, omitted in printing.]

3 In United States District Court

Docket entries

[Title omitted.]

Viol. 29 U. S. C. A.; Sec. 15 (a) (1), 15 (a) (2) & 15 (a) (5)
Fair Labor Standards Act of 1938, 15 cts.

1-25-44—Ent. ord. filing & fld. info. & releasg. deft. O. R.

2-23-44—Fld. plea of former jeopardy. Fld. mot. retn. 2-25-44 at
2 P. M. for B/P.

3-3-44—Fld. mot. to quash inform., demurrer, mot. to suppress
& affd. of deft. in supp. of mot. to suppress.

3-27-44—* * * Ent. procs. hrg. on demurrer and ent. order
sustng. as to counts 1, 2, 4, 5, 6, 7, 9, 11 and 12 and over-
ruling as to counts 3, 8 and 10. * * *

4 In United States District Court

[Title omitted.]

Order filing information, etc.

Jan. 25, 1944

On motion of Ray H. Kinnison, Esq., Assistant U. S. Attorney,
appearing for the Government, who present an Information to the
Court in this cause, it is ordered that the said Information be filed
and that the defendant, Herman Rosenwasser, doing business under
the firm name and style of Perfect Garment Co., be, and he hereby
is, released on his own recognizance.

5 In the District Court of the United States in and for the
Southern District of California, Central Division

No. 16564 CR

UNITED STATES OF AMERICA, PLAINTIFF

HERMAN ROSENWASSER, AN INDIVIDUAL DOING BUSINESS UNDER THE
FIRM NAME AND STYLE OF PERFECT GARMENT COMPANY,
DEFENDANT

Information

Filed Jan. 25, 1944

Violations of 29 U. S. C. A. Sections 15 (a) (1), 15 (a) (2) and 15
(a) (5), Fair Labor Standards Act of 1938

COUNT ONE

¶ Charles H. Carr, United States Attorney in and for the Southern District of California, who, for the United States in this behalf prosecutes in his own proper person, and with leave of court first had and obtained, gives the court here to understand and to be informed as follows, to wit:

1. That Herman Rosenwasser of the City of Los Angeles, Los Angeles County, California, within the Central Division of the Southern District of California, the defendant herein, is, and at all times hereinafter referred to, was the sole owner and operator of a place of business and manufacturing plant which he operates under the fictitious firm name of Perfect Garment Company;

2. That the defendant Herman Rosenwasser is, and at all times hereinafter referred to, was engaged under the fictitious firm name and style of Perfect Garment Company in the business of producing men's and women's coats and suits and Army and Navy Officers' uniforms; that in the course of said business he procures and obtains raw materials, manufactures, and produces therefrom men's and women's coats and suits and Army and Navy Officers' uniforms and sells and ships such garments;

3. That the defendant Herman Rosenwasser is, and at all times hereinafter referred to, was in charge of the aforesaid manufacture and production operations conducted by him and engaged in the supervision and direction of all employees employed by him;

4. That the defendant Herman Rosenwasser is and at all times hereinafter referred to was, an employer within the meaning of and subject to the provisions of the Fair Labor Standards Act of 1938; that the men's and women's coats and suits and Army and Navy officers' uniforms manufactured and produced by the defendant Herman Rosenwasser were, at all times hereinafter referred to, manufactured and produced by him with the intent on the part of the said defendant Herman Rosenwasser that all or some part of said goods would be sold, shipped, transported, and delivered to customers at points outside the State of California; that a substantial portion of the said coats and suits and uniforms so produced were sold, shipped, transported, and delivered to customers at points outside the State of California; that in producing the said coats, suits and uniforms the defendant Herman Rosenwasser produced goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938;

5. That the defendant Herman Rosenwasser, at all times hereinafter referred to, employed and permitted and suffered to work

in the production of goods, to wit: coats, suits, and uniforms, as aforesaid, numerous persons who were employees within the meaning of the Fair Labor Standards Act of 1938;

6. That a large proportion of the said employees was engaged, at all times hereinafter referred to, in the production of goods, to wit: coats, suits and uniforms, for interstate commerce within the meaning of the Fair Labor Standards Act of 1938;

7. That on October 21, 1938, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to the authority vested in him by Section 11 (c) of the Fair Labor Standards Act of 1938, duly issued regulations on records to be kept by employers subject to any provision of the Fair Labor Standards Act of 1938; that the said regulations were published in the Federal Register of October 22, 1938, and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516;

8. That the defendant Herman Rosenwasser employed, within the meaning of the Fair Labor Standards Act of 1938, one Grace Walton during the workweek beginning April 5, 1942, and ending April 11, 1942, in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms, for interstate commerce, and the defendant Herman Rosenwasser on or about April 11, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this court, did unlawfully and willfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11 (c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant Herman Rosenwasser did, on or about April 11, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this court, unlawfully and willfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Grace Walton" and the date "Apr. 11, '42," the following entries in a column entitled "Reg. Hrs." to wit: opposite the word "Monday" "8"; opposite "Tuesday" "8"; opposite "Wednesday" "8"; opposite "Thursday" "8"; opposite "Friday" "8"; and opposite "total" "40"; which said entries purport to show and in substance and effect declare that the hours worked by the said Grace Walton during the workweek commencing April 5, 1942,

and ending April 11, 1942, were 40, whereas in truth and in fact, as the defendant, Herman Rosenwasser, then and there well knew, the hours worked by said Grace Walton during said workweek were not 40 and in fact were 49:

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

COUNT TWO

And the said United States Attorney, in the manner and form aforesaid, further informs the court that:

1. Each and every allegation contained in paragraphs 1 to 7 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Nadya Calloway, during the workweek beginning March 29, 1942, and ending April 4, 1942, in the production of goods, to wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and the defendant, Herman Rosenwasser, on or about April 4, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11 (c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about April 4, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Nadya Calloway" and the date "April 4, 1942," the following entries, to wit: opposite "Monday": after the word "In" "8," after the word "Out" "1," in a column entitled "Reg. Hrs." "7"; opposite "Tuesday": after the word "In" "8," after the word "Out" "4," in the said column "7"; opposite "Friday": after the word "In" "8," after the word "Out" "4," in the said column "7"; opposite "Thursday": after the word "In" "8," after the word "Out" "4," in said column "7"; opposite "Friday": after the word "In" "8," after the word "Out" "4," in said column "7"; opposite

9. "Saturday": after the word "In" "8," after the word "Out" "12," in said column "4"; and after the word "Total" "39"; which said entries purport to show and in substance and effect declare that the hours worked by said Nadya Calloway during the workweek commencing March 29, 1942, and ending April 4, 1942, were 39, whereas in truth and in fact, as defendant, Herman Rosenwasser, then and there well knew, the hours worked by said Nadya Calloway during said workweek were not 39 and in fact were 45:

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

10

COUNT III

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 7, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Lukena Patella, during the workweek beginning April 12, 1942, and ending April 18, 1942, in the production of goods, to wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about April 17, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11 (c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about April 17, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said sheet bearing the name "Lukena Patella" and the date "April 17, 1942," the following entries, to wit: opposite "Monday": after the word "In" "8:00," after the word "Out" "5:00," in a column entitled "Reg. Hrs." "8"; opposite "Tuesday": after the word "In" "8:00," after the word "Out"

"5:00," and in said column "8"; opposite "Wednesday"; after the word "In" "8:00," after the word "Out" "4:30," in said column "8"; opposite "Thursday"; after the word "In" "8:00," after the word "Out" "5:30," in said column "8"; opposite "Friday"; 11 after the word "In" "8:00," after the word "Out" "5:00," in said column "8"; and opposite the word "Total" "40"; which said entries purport to show and in substance and effect declare that the hours worked by said Lukena Patella during the workweek commencing April 12, 1942, and ending April 18, 1942, were 40, whereas in truth and in fact, as defendant, Herman Rosenwasser then and there well knew the hours worked by said Lukena Patella during the said workweek were not 40 and in fact were 42½;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 7 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Jennie Green, during the workweek beginning September 13, 1942, and ending September 19, 1942, in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about September 18, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11 (c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about September 18, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of the said defendant, Herman Rosenwasser, said sheet bearing the name

"Jennie Green" and the date "9/18/42," the following entries, to wit: opposite "Monday"; after the word "In" "8," after the word "Out" "4:30"; opposite "Tuesday"; after the word "In" "8," after the word "Out" "4:30"; opposite "Wednesday"; after the word "In" "8," after the word "Out" "4:30"; opposite "Thursday"; after the word "In" "8," after the word "Out" "4:30"; opposite "Friday" after the word "In" "8," after the word "Out" "4:30";

12 which said entries purport to show and in substance and effect declare that said Jennie Green, during the workweek commencing September 13, 1942, and ending September 19, 1942, did not work on Saturday, September 19, 1942, whereas in truth and in fact as defendant, Herman Rosenwasser, then and there well knew, the said Jennie Green did work on Saturday, September 19, 1942, and that the total hours worked by said Jennie Green in said workweek were in excess of those recorded by the defendant as having been worked by said Jennie Green.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

14

COUNT V

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 7, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full.

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Joseph Krayer during the workweek beginning October 4, 1942, and ending October 10, 1942, in the production of goods, to wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about October 9, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Sec. 11 (c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about October 9, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within

the jurisdiction of this Court, unlawfully and wilfully make and cause to be made an a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Joseph Krayner" and the date "Oct 9" 1942, the following entries, to-wit: opposite "Monday": after "In" "8," after the word "Out" "4:30," in a column entitled "Reg. Hrs." "8"; opposite "Tuesday": after "In" "8," after the word "Out" "5," in said column "8"; opposite "Wednesday": after "In" "8," after the word "Out" "4:30," in said column "8"; opposite "Thursday": after "In" "8," after the word "Out" "4:30," in said column "8"; opposite "Friday": after "In" "8"; after the word "Out" "5:30," in said column "8"; 15 and after the word "Total" "40"; which said entries purport to show and in substance and effect declare that the hours worked by said Joseph Krayner during said workweek commencing October 4, 1942, and ending October 10, 1942, were 40, whereas in truth and in fact, as defendant, Herman Rosenwasser, then and there well knew, the hours worked by the said Joseph Krayner were not 40 and in fact were 41½;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

16

COUNT VI

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That on May 15, 1940, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to and in accordance with the authority conferred upon him by Sections 5 and 8 of the Fair Labor Standards Act of 1938, duly issued a Wage Order for the cloaks, suits, and separate skirts division of the apparel industry; that the said Wage Order was published in the Federal Register on May 17, 1940, and is known as Title 29, Chapter V, Code of Federal Regulations, Part 566; that the said Wage Order became effective on July 15, 1940, and has been at all times since said date, and is now, in full force and effect.

3. That the said Wage Order requires every employer to pay to each of his employees who is engaged in the production for interstate commerce, within the meaning of the Fair Labor Standards Act of 1938, of women's coats, suits, and skirts, wages at a rate not less than forty cents (40c) an hour, from and after July 15, 1940;

4. That on May 15, 1940, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to and in accordance with the authority conferred upon him by Sections 5 and 8 of the Fair Labor Standards Act of 1938, duly issued a Wage Order for the men's and boys' clothing division of the apparel industry; that the said Wage Order was published in the Federal Register on May 17, 1940, and is known as Title 29, Chapter V, Code of Federal Regulations, Part 559; that the said Wage Order became effective on July 15, 1940, and has been at all times since said date and is now in full force and effect;

5. That the said Wage Order requires every employer to pay to each of his employees who is engaged in the production for interstate commerce, within the meaning of the Fair Labor Standards Act of 1938, of men's and women's coats and suits and Army and Navy Officers' uniforms, wages at a rate not less than forty cents (40c) an hour, from and after July 15, 1940;

6. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to wit: women's coats, suits, and skirts and men's and boys' coats, suits, and tailored uniforms, for interstate commerce, one John M. Gomez, during the workweek beginning November 30, 1941, and ending December 6, 1941, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California and within the jurisdiction of this Court, did, on or about December 6, 1941, unlawfully and wilfully fail to pay to the said John M. Gomez wages at a rate not less than forty cents (40c) an hour for the said work so performed by him during the said workweek; that is to say, the defendant did, at the time and place aforesaid, pay to the said John M. Gomez wages at a rate less than forty cents (40c) an hour, to wit: at the rate of thirty-three cents (33c) an hour for the said work so performed by him during the said workweek;

Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

18

COUNT VII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 4 to 6 inclusive of the First Count of this Information is hereby referred

to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full.

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standard Act of 1938, employ in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one A. C. Schultz for a workweek longer than forty (40) hours, beginning September 14, 1941, and ending September 20, 1941, and the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about September 20, 1941, did unlawfully and wilfully fail to pay the said A. C. Schultz wages for the hours in excess of forty (40) worked by the said A. C. Schultz during the said workweek at a rate not less than one and one-half times the regular rate at which the said A. C. Schultz was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said A. C. Schultz for his employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

19

COUNT VIII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standard Act of 1938, employ in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Lukena Patella, for a workweek longer than forty (40) hours, beginning March 29, 1942, and ending April 4, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the

jurisdiction of this Court, on or about April 4, 1942, did unlawfully and wilfully fail to pay to the said Lukena Patella wages for the hours in excess of forty (40) worked by the said Lukena Patella during the said workweek at a rate not less than one and one-half times the regular rate at which the said Lukena Patella was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Lukena Patella for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided: (Fair Labor Standards Act of 1938.)

26

COUNT IX

And the said United States Attorney in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Grace Walton, for a workweek longer than forty (40) hours, beginning April 5, 1942, and ending April 11, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about April 11, 1942, did unlawfully and wilfully fail to pay to the said Grace Walton during the said workweek wages for the hours in excess of forty (40) worked by the said Grace Walton during the said workweek at a rate not less than one and one-half times the regular rate at which the said Grace Walton was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Grace Walton for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided: (Fair Labor Standards Act of 1938.)

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Nathan Berger, for a workweek longer than forty (40) hours, beginning May 31, 1942, and ending June 6, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about June 6, 1942, did unlawfully and wilfully fail to pay to the said Nathan Berger during the said workweek wages for the hours in excess of forty (40) worked by the said Nathan Berger during the said workweek at a rate not less than one and one-half times the regular rate at which the said Nathan Berger was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Nathan Berger for his employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to wit: men's

and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, one Jennie Green for a workweek longer than forty (40) hours, beginning September 13, 1942, and ending September 19, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about September 19, 1942, did unlawfully and wilfully fail to pay to the said Jennie Green during the said workweek wages for the hours in excess of forty (40) worked by the said Jennie Green during the said workweek at a rate not less than one and one-half times the regular rate at which the said Jennie Green was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Jennie Green for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

23

COUNT XII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, with the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, one Joseph Krayer, for a workweek longer than forty (40) hours, beginning October 4, 1942, and ending October 10, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about October 10, 1942, did unlawfully and wilfully fail to pay to the said Joseph Krayer during the said workweek wages for the hours in excess of forty (40) worked by the said Joseph Krayer during the said workweek at a rate not less than one and one-half times the regular rate at which the said Joseph Krayer was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Joseph Krayer for his employment in ex-

cess of forty (40) hours during the said workweek at a rate of less than one and one-half the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, on or about April 7, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wilfully sold, transported, shipped and delivered from a point within the State of California to a point outside the State of California, and in the State of Oregon, to wit: coats and suits, identified by Invoice No. 1758, in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which the said defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty cents (40c) an hour and to whom defendant paid wages at a rate less than forty cents (40c) an hour;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

And the United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this Count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, on or about June 9, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wilfully sold, transported, shipped and delivered, from a point within the State of California, to a point outside the State of California, and in the State of Nevada, goods, to wit: suits and coats identified by Invoice No. 3262 in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which the defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty cents (40¢) an hour and to whom defendant paid wages at a rate less than forty cents (40¢) an hour:

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

26

COUNT XV

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, on or about October 10, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wilfully sold, transported, shipped, and delivered, from a point within the State of California, to a point outside the State of California, and in the State of Texas, goods, to wit: suits and coats identified by Invoice No. 3938 in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in

said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which the said defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty cents (40c) an hour and to whom defendant paid wages at a rate less than forty cents (40c) an hour;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

Whereupon, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR,
United States Attorney.

CHARLES H. VEALE,
Assistant U. S. Attorney.

27 UNITED STATES OF AMERICA.

Southern District of California, ss:

Perry A. Bertram, Attorney, United States Department of Labor, being first duly sworn on his oath says: that he has read the foregoing Information and that the matters contained therein are true and correct to the best of his knowledge and belief.

PERRY A. BERTRAM.

Subscribed and sworn to before me this 20th day of January 1944.

[SEAL]

FLORENCE LEE MULLER,
*Notary Public in and for the County
of Los Angeles, State of California.*

My Commission expires January 27, 1946.

[File endorsement omitted.]

28 IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted.]

Demurrer to information

Filed March 3, 1944

Now comes Herman Rosenwasser, defendant in the above-entitled cause, by Bernard B. Laven, his attorney and demurs to the information, and to each and every count thereof, and for grounds of demurrer says:

I

That the Fair Labor Standards Act of 1938, Title 29, Sections 207 (a) (3) and 211 (c) and Regulations made pursuant thereto are violative of the Sixth Amendment to the Constitution of the United States in that the said Sections are too vague, indefinite, and uncertain to constitute a public offense.

II

The Information and each Count thereof fails to charge an offense against the laws of the United States and the provisions of the law alleged therein in each Count of said Information, and are void as being in contravention of the Sixth Amendment to the Constitution of the United States.

III

The facts stated in said Information thereof and each Count thereof do not constitute a crime against the laws of the United States.

A. The Information fails to set forth in Counts I to XV, inclusive, that the alleged employees of the defendant were employed and working at a regular rate of pay and subject to the Act.

That said information in Counts I to XV, inclusive, and each of them is uncertain in the following particulars:

a. That the said Counts of said Information fail to disclose, and it cannot be ascertained therefrom, whether the alleged employees of the defendant were employed and working at a regular rate of pay, subject to the provisions of the Act or working on a piece work basis at an irregular rate of pay.

b. That said information in Counts I to XV, inclusive, and each of them fails to disclose and it cannot be ascertained therefrom how or in what manner defendant is subject to the provisions of the said Act.

c. That the Information in Counts I to XV, inclusive, and each of them fails to disclose and it cannot be ascertained therefrom how, or in what manner the defendant participated in all or any of the acts alleged therein.

IV

That the information in Counts I to XV, inclusive, and each of them is ambiguous for the reasons that it is uncertain and unintelligible.

Wherefore, defendant prays that this Demurrer to said Information, and each Count therein, as to the said Herman
 30 Rosenwasser, defendant herein, be sustained and the same be dismissed, and that he be discharged and go forth in accordance with due process of law.

Dated this 2nd day of March 1944.

BERNARD B. LAVEN,
 Bernard B. Laven,

Attorney for Defendant.

I, Bernard B. Laven, certify that I have examined the Information herein and investigated the law applicable thereto, and that in my opinion the within Demurrer is well taken; that the same is filed in good faith and not for the purpose of delay.

BERNARD B. LAVEN,
Attorney for Defendant.

31

Points and authorities

Naftzer vs. U. S., 200 Fed. 494.

Arnold vs. U. S., 115 Fed. 2nd, 523.

Pierce vs. U. S., 62 S. Ct. 237, 314 U. S. 306. Reversing 115 Fed. 2nd 399.

First Natl. Bank vs. U. S., 206 F. 374, 376, 12 C. C. A. 256.

Lamb vs. U. S., 115 Fed. 2nd, 157.

Johnson vs. U. S., 59 Fed. 2nd, 42, Cert. denied. 287 U. S. 631, 77 L. ed. 547, 53 S. Ct. 831.

U. S. vs. Wilterberger, 5 Wheat. 76, 5 L. ed. 37.

U. S. vs. Katz, 271 U. S. 354, 70 L. ed. 986.

[File endorsement omitted.]

32

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted.]

[File endorsement omitted.]

Motion for bill of particulars

Filed Feb. 23, 1944

To CHARLES H. CARR, *United States Attorney*:

Please take notice that the defendant Herman Rosenwasser, by his attorney Bernard B. Laven, moves the Court on the 25th of February 1944, at the hour of 2 P. M., or as soon thereafter as counsel can be heard, for an order directing the United States Attorney to furnish said defendant within a time to be therein specified, a written bill of particulars as to the following matters:

I

Apprise the defendant fully of whether Grace Walton in Count I, Nadya Calloway in Count II, Lukena Patella in Count III, Jennie Green in Count IV, Joseph Krayner in Count V, John H. Gomez in Count VI, S. C. Schultz in Count VII, Lukena Patella in Count VIII, Grace Walton in Count IX, Nathan Berger in Count X, Jennie Green in Count XI, Joseph Krayner in Count XII, each, any or all of them were employed at the time alleged therein on an hourly wage and/or piece work basis.

II

The unlawful and wilful acts of which defendant is charged, and time and place, witnesses present and circumstances under which the defendant participated to any extent therein.

BERNARD B. LAVEN,
Bernard B. Laven,
Attorney for Defendant.

Good cause appearing, the time for service of notice herein is shortened to 3 days.

Dated: this 29th day of February 1944.

J. F. T. O'CONNOR, *Judge.*

34 *Points and authorities*

A Bill of Particulars is the appropriate remedy where the indictment is general or indefinite as where the indictment or information does not give the accused sufficient knowledge to enable him to prepare for trial.

Brayton vs. U. S. 74 Fed. 2nd, 385.

A Bill of Particulars should be granted when needed to enable the defendant to attack the indictment.

Singer vs. U. S. 58 Fed. 2nd, 74.

Respectfully submitted,

BERNARD B. LAVEN,
Attorney for Defendant.

Received copy of the within Mo. for Bill of Particulars this 23 day of Febr. 1944.

CHARLES H. CARR,
U. S. Atty.
By R. MacKAY,
Attorney for Plaintiff.

[Title omitted.]

[File endorsement omitted.]

Bill of particulars

Filed March 22, 1944

The Government, in response to the order of Court granting, in part, defendant's request for Bill of Particulars, states that according to its information and belief the following employees were, respectively, employed on the basis set forth after their names:

Count and name of employee:

	Basis of payment
I—Grace Walton	Piece Rate.
II—Nadya Calloway	Piece Rate.
III—Lukena Patella	Hourly Rate.
IV—Jennie Green	Piece Rate.
V—Joseph Kraver	Piece Rate.
VI—John H. Gomez	Piece Rate.
VII—S. C. Schulz	Piece Rate.
VIII—Lukena Patella	Hourly Rate.
IX—Grace Berger	Piece Rate.
X—Nathan Berger	Weekly Salary.
XI—Jennie Green	Piece Rate.
XII—Joseph Krayer	Piece Rate.

Dated March 22nd, 1944.

Respectfully submitted

CHARLES H. CARR,

United States Attorney,

JAMES M. CARTER,

Assistant U. S. Attorney,

V. P. LUCAS,

V. P. Lucas,

*Assistant U. S. Attorney,**Attorneys for Plaintiff.*

[Title omitted.]

[File endorsement omitted.]

Minute entry of hearing

March 27, 1944

This cause coming on for (1) hearing on defendant's plea of former jeopardy, filed February 23, 1944; (2) hearing on defendant's motion to quash each and every count, pursuant to notice filed March 3, 1944; (3) hearing on Demurrer to Information, pursuant to notice filed March 3, 1944; and (4) for arraignment and plea: V. P. Lucas, Assistant U. S. Attorney, appearing as counsel for the Government; Bernard B. Laven, Esq., appearing as counsel for the defendant, Herman Rosenwasser, who is present; and John Q. Bybee, Court Reporter, being present and reporting the testimony and the proceedings.

Attorney Laven argues in support of motion to quash each and every count and in support of Demurrer. It is ordered that the demurrer be sustained as to counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 and overruled as to counts 3, 8, and 10, and motion to quash is denied.

Attorney Laven now argues in support of defendant's plea of former jeopardy and Attorney Lucas argues in opposition. It is ordered that defendant's plea of former jeopardy be, and it is, overruled as to counts 13, 14, and 15.

The defendant states his true name to be as charged and upon being required to plead to counts 3, 8, 10, 13, 14, and 15 waives reading of the Information and enters his plea of not guilty as to counts 3, 8, and 10 and not guilty by reason of former jeopardy as to counts 13, 14, and 15; whereupon, it is ordered that the case be, and it hereby is, continued to April 24, 1944, at 10 A. M., for setting for trial. Attorney Laven excepts to the Court's adverse ruling as to counts 3, 8, 10, 13, 14, and 15, which exception is ordered noted.

38 In the District Court of the United States

[Title omitted.]

Order on defendant's demurrer

Filed April 13, 1944

The above entitled matter came on regularly for hearing in the above entitled Court before Honorable Peirson M. Hall, Judge presiding, on March 27, 1944 at 10 o'clock A. M. on defendant's Demurrer to all counts of the Information, the Government being represented by Charles H. Carr, United States Attorney, and by

V. P. Lucas, Assistant United States Attorney, and the defendant being present in person and represented by his counsel, Bernard B. Laven, and the Court being fully advised in the premises;

It is hereby ordered that the Demurrer is sustained as to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12, which said counts charged violations of Sections 15 (a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938 (Title 29 U. S. C., Section 201, et seq.) as to employees alleged to have been employed by the defendant at piece rates on the ground that said counts are insufficient in law to charge an offense under said Act in that the provisions thereof do not apply to piece-rate workers.

Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12, as to which the Demurrer is sustained, are hereby dismissed.

The Demurrer is overruled as to Counts 3, 8, 10, 13, 14, and 15.

Dated April 11, 1944.

PEARSON M. HALL,

United States District Judge.

39-46

In the District Court of the United States.

[Title omitted.]

[File endorsement omitted.]

Petition for appeal

Filed April 24, 1944

Comes now the United States of America, plaintiff herein, and states that on the 11th day of April, 1944, the District Court of the United States for the Southern District of California, Central Division, entered a judgment and order sustaining a demurrer to the information herein, with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 thereof, and dismissing the said counts, and that the United States of America, feeling aggrieved at the ruling of the District Court in sustaining the said demurrer with respect to these counts and in dismissing the same, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

UNITED STATES OF AMERICA,

CHARLES H. CARR,

United States Attorney,

Southern District of California.

[File endorsement omitted.]

47 In the District Court of the United States

[To be omitted.]

Assignment of errors

Filed May 5, 1944

Comes now the United States of America, by Charles H. Carr, United States Attorney for the Southern District of California, and avers that in the record proceedings and judgment and order herein there is manifest error and against the just rights of the said plaintiff, the United States of America, in this, to wit:

1. That the court erred in sustaining the demurrer to the information, with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 thereof.

2. That the court erred in dismissing Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 of the information.

3. That the court erred in holding that Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 of the information are insufficient in law to charge any offense under Sections 15 (a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938, (29 U. S. C. 215 (a) (2) (5)).

4. That the Court erred in holding that Sections 15 (a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938 (29 U. S. C. 215 (a) (2) (5)) have no application to piece-rate workers.

CHARLES H. CARR,

United States Attorney,

Southern District of California.

[File endorsement omitted.]

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed April 24, 1944

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the order and judgment in the cause sustaining the defendant's demurrer to the information, with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 hereof, and dismissing said counts, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of the Court, it is, therefore, by the Court, ordered and adjudged, that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court sustaining the defendant's demurrer to the information, with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 thereof, and dismissing said counts, to the Supreme Court of the United States, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court.

49-50 It is further ordered, that the United States of America be, and it is hereby, permitted a period of sixty days in which to file and docket the said appeal in the Supreme Court of the United States.

Dated at Los Angeles, California, this 24th day of April 1944.

By the Court:

PEARSON M. HALL,

*United States District Judge
Southern District of California,
Central Division.*

[File endorsement omitted.]

51 In the District Court of the United States

[Title omitted.]

Præcipe for transcript of record

Filed May 5, 1944

To the Clerk, District Court of the United States for the Southern District of California, Central Division:

The appellant, the United States of America, hereby directs that in preparing the transcript of the record in this cause in the District Court of the United States for the Southern District of California, Central Division, you include the following:

1. Docket entries and minute entries showing filing of the information, the filing of a motion for a bill of particulars and a demurrer to the information, and the entry of the order sustaining the demurrer with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12, and dismissing the said counts.

2. The information.

3. The motion for a bill of particulars.

4. The demurrer.

5. The bill of particulars.

6. The order, dated April 11, 1944, sustaining the demurrer with respect to Counts 1, 2, 4, 5, 6, 7, 9, 11, and 12 and dismissing the said counts, and overruling the demurrer with respect to Counts 3, 8, 10, 13, 14, and 15.

52 7. The petition for appeal to the Supreme Court.

8. The statement as to the jurisdiction of the Supreme Court.

9. The assignment of errors.

10. The order allowing appeal.

11. The notice of service on the appellee of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

12. The citation.

13. The præcipe.

CHARLES H. CARR,

United States Attorney,

Southern District of California.

UNITED STATES OF AMERICA,

Southern District of California, ss:

Fredericka Garrett, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of Los Angeles County, California; that she is an employee of the United States Attorney's office, her business address being 600 Federal

Building, Los Angeles, California; that she is over the age of eighteen years, and not a party to the above-entitled action;

That on May 2, 1944, she delivered to Bernard B. Laven, at 608 S. Hill St., Los Angeles, California, attorney for the defendant herein, a copy of the within Praecepte for Transcript of Record, which was received by Mr. Laven.

FREDERICK A. GARRETT,

Subscribed and sworn to before me this 5th day of May 1944.

EDMUND L. SMITH,

*Clerk of U. S. District Court,
Southern District of California.*

By: IRWIN HAMES,

Deputy.

[SEAL]

[File endorsement omitted.]

53 [Clerk's certificate to foregoing transcript omitted in printing.]

54 In the Supreme Court of the United States

Statement of points to be relied on and designation of record

Filed June 22, 1944

Pursuant to Rule XIII, paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

Solicitor General.

[File endorsement omitted.]

55 Supreme Court of the United States

Order noting probable jurisdiction

June 12, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

[Endorsement on cover:] File No. 48,537. S. California, D. C. U. S. Term No. 106. The United States of America, Appellant vs. Herman Rosenwasser, an Individual doing business under the firm name and style of Perfect Garment Company. Filed May 29, 1944. Term No. 106 O. T. 1944.

